



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

<http://www.epa.gov/region08>

DOCKET NO.: CAA-08-2004-0003

IN THE MATTER OF:

BLACK HILLS BENTONITE LLC

Respondent

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

January 22, 2004
DATE

SIGNED
Alfred C. Smith
Regional Judicial Officer



**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466**

IN THE MATTER OF:	:
	:
BLACK HILLS BENTONITE LLC	: DOCKET NO. CAA-08-2004-0003
	:
Respondent	:

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This administrative Consent Agreement (the “Consent Agreement”) is entered into by and between the Complainant, the Director of the Air Protection Division, United States Environmental Protection Agency, Region VIII (“EPA” or “Complainant”), Black Hills Bentonite (“Respondent”), and filed along with the attached Final Order, pursuant to Sections 113(a)(3) and (d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, (the “Consolidated Rules of Practice”).
2. The Consolidated Rules of Practice, at 40 C.F.R. § 22.13 provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).
3. This Consent Agreement and the accompanying Final Order (collectively referred to as the “CAFO”) address alleged violations by Respondent of Section 504 of the CAA, 42 U.S.C. § 7661c (c) and regulations promulgated thereunder at 40 C.F.R. §70.6(c)(5)(iii), pertaining to the requirement that all sources subject to Part 70 of the regulations (related to the Title V operating permit program) certify as to the accuracy of their compliance status, and identify each “deviation” from the applicable requirements, terms and conditions of their Title V operating permit.

II. GENERAL PROVISIONS

4. Respondent admits to EPA's jurisdiction as set forth in this Consent Agreement.
5. Respondent neither admits nor denies the specific factual allegations and the conclusions of law set forth in this CAFO.
6. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CAFO, the issuance of the accompanying Final Order, or the enforcement of the CAFO.
7. Respondent consents to the issuance of the accompanying Final Order, and to the terms and conditions set forth therein, and consents to the payment of a civil penalty as set forth in this CAFO.
8. Respondent agrees to pay its own costs and attorney fees.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. In accordance with 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law:
 - A. Respondent is a corporation incorporated in the State of Wyoming, with a principal place of business located at Mills, Wyoming.
 - B. Respondent is a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).
 - C. Respondent is the owner and operator of a "Part 70 source" (as that term is defined at 40 C.F.R. § 70.2), which is located at 302 Hudson St., Mills, Natrona County, WY.
 - D. Respondent is subject to the requirements of the "Part 70 program", or approved State program (as that term is defined at 40 C.F.R. § 70.2).
 - E. Pursuant to 40 C.F.R. § 70.1(b), all sources subject to the Part 70 program shall have a permit to operate that assures compliance by the source with all "applicable requirements" (as that term is defined at 40 C.F.R. § 70.2).
 - F. In accordance with the requirements of 40 C.F.R. Part 70, and provisions of Wyoming Air Quality Standards and Regulations at W.S. §35-11-203 through W.S. §35-11-212 and Chapter 6, Section 3, Respondent was issued a "Part 70 permit" by the State of Wyoming on September 28, 2000, Permit 30-176.

- G. Pursuant to Section 114(a)(3) of the CAA, 42 U.S.C. §7414(a)(3), EPA shall, in the case of a person which is the owner or operator of a major stationary source, and may, in the case of any other person, “. . . require [the] submission of compliance certifications.”
- H. Pursuant to 40 C.F.R. § 70.6(c)(5)(i), the frequency of submissions for compliance certifications shall be not less than annually, or such more frequent periods as specified in the applicable requirement or by the permitting authority.
- I. Pursuant to Section 504(c) of the CAA, 42 U.S.C. §7661c (c), and the implementing regulations found at 40 C.F.R. § 70.6(c)(5)(iii), all Part 70 permits shall contain compliance certifications “. . .sufficient to assure compliance with the terms and conditions of the permit.”
- J. Pursuant to 40 C.F.R. § 70.6(c)(5)(iii)(C), compliance certifications shall include: “The status of compliance with the terms and conditions of the permit for the period covered by the certification. . .[and], the certification shall identify each deviation and take it into account in the compliance certification.” (emphasis added).
- K. Pursuant to Section 504 of the CAA, 42 U.S.C. § 7661(c).(c), “[a]ny report required to be submitted by a permit issued to a corporation under this subchapter shall be signed by a responsible corporate official, who shall certify its accuracy.”
- L. Pursuant to 40 C.F.R. § 70.6(c)(5)(iv), all compliance certifications must be submitted to the Complainant, as well as to the permitting authority.
- M. Pursuant to WDEQ Operating Permit 30-176, Condition C1(a) the permittee shall submit by January 31 each year a certification addressing compliance with the requirements of this permit.
- N. On 2/24/03 Respondent issued their Annual Compliance Report for calendar year 2002 for the Black Hills Bentonite LLC, Mills Complex. In that document which was certified for truth, accuracy, and completeness, Respondent failed to identify a Notice of Violation (NOV, WY Docket #3413-02) that was issued on 10/03/02 for monitoring violations including the failure to conduct quarterly Method 9 tests on the telescopic chute associated with the outdoor 1,000-ton crushed and dried bentonite stockpile as required by condition F10(a) of Wyoming state permit 30-176. In fact, in Respondent’s compliance certification for that permit condition, Respondent reported "In" compliance and "Continuous" and in the associated comments said, "Method 9 testing was performed quarterly on the telescopic chute.”

- O. Respondent's compliance certification failed to identify the deviation listed in paragraph N from the applicable requirements, terms and conditions of Respondent's Title V operating permit and thus, constitute a violation of 40 C.F.R. § 70.6(c)(5)(iii)(C).

IV. SETTLEMENT RECITATION

Compliance

10. Respondent herein certifies to Complainant and to EPA that, upon investigation, to the best of its knowledge and belief, it presently is in compliance with the provisions of the Act, and the regulations promulgated thereunder, that are referenced in this Consent Agreement and that all violations alleged in the Consent Agreement have been remedied.

Civil Penalty

11. Respondent consents and agrees to pay a civil penalty in the amount of one thousand dollars (\$1,000.00)], in the manner described below in this paragraph:
- A. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. The date the payment is made is considered to be the date of receipt of the payment at the Mellon Bank described below. Payments must be received by 11:00 a.m. EST to be considered as received that day.
- B. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

A copy of the check shall be sent simultaneously to:

Cindy Beeler
Environmental Engineer
Technical Enforcement Program (ENF-AT)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

- C. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 31 days of interest accrues).
- D. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to accrued interest, penalty and/or handling charge; the balance is then applied to the outstanding principal amount.
- E. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

Reservation of Rights

- 12. This Consent Agreement and the attached Final Order only resolve the violations of 40 C.F.R. § 70.6(c)(5)(iii)(C) as alleged in Paragraph 9. Nothing herein shall be construed to limit the authority of the EPA to undertake action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nor shall anything in this Consent Agreement and the attached Final Order

be construed to limit the United States' authority to pursue criminal sanctions.

13. EPA reserves any rights and remedies available to it to enforce the provisions of this Consent Agreement, the Act and its implementing provisions, and of any other federal laws or regulations for which it has jurisdiction, following the entry of this Consent Agreement.

Waiver of Hearing

14. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), concerning the finality or validity of this CAFO, or with respect to any issue of law or fact set forth in this CAFO. Respondent also waives its rights to appeal the accompanying Final Order.

Effective Date

15. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order is filed with the Regional Hearing Clerk, U.S. EPA, Region VIII.

The undersigned representative of Respondent certifies that they are fully authorized to execute this Consent Agreement and to legally bind the party they represent.

FOR RESPONDENT: Black Hills Bentonite LLC

Jan 6, 2004

DATE:

SIGNED

Name: Mr. Thomas A. Thorson
Title: President
Black Hills Bentonite LLC

1/21/04

Date

SIGNED

Carol Rushin, Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice
U.S. Environmental Protection Agency, Region VIII

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **BLACK HILLS BENTONITE LLC., DOCKET NO.: CAA-08-2004-0003** was filed with the Regional Hearing Clerk on January 22, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Marc Weiner, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on January 22, 2004, to:

Mr. Thomas A. Thorson, President
Black Hills Bentonite LLC
302 Hudson Street
Mills, WY 82644

January 22, 2004

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
JANUARY 22, 2004.**

